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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

DALLAS WOLL,

Plaintiff,

v.

COUNTY OF LAKE, MARY JANE
 FIGALDE, and HENRY BOUILLERCE, et
 al.,

Defendants.

Case No. CV 07 6299 BZ ENE
 (Unlimited Civil Case)
 Hon. Magistrate Bernard Zimmerman

**JOINT STATEMENT OF MATERIAL
 FACTS NOT IN DISPUTE AND CITATIONS
 TO EVIDENCE IN SUPPORT OF
 DEFENDANT COUNTY OF LAKE'S
 MOTION FOR SUMMARY JUDGMENT OR,
 IN THE ALTERNATIVE, SUMMARY
 ADJUDICATION**

Date: October 22, 2008
 Time: 10:00 a.m.
 Courtroom G, 15th Floor
 Trial Date: December 15, 2008

Defendants submit this statement of material facts not in dispute and citations to evidence in support of motion for summary judgment herein filed by defendants.

Statement of Material Facts Not in Dispute	Citations to Evidence
1. This case involves operation of a "Roto-Rooter" business on land zoned for agricultural, not commercial, operations at 6585 Jacobsen Road, Kelseyville, California ("the property"). County records reveal that the owners of the property are Dallas and Theresa Woll ("the owners").	Declaration of Henry "Hank" Bouillercce, page 2, paragraph 2. Opposing Counsel's Objection: irrelevant; disputed as to zoning and legal effect thereof; disputed that case is about the operation of Roto-Rooter at the premises, the primary issue is whether plaintiff received due process, i.e.

1		notice and opportunity to be heard prior to the
2		recordation of the "Notice of Nuisance."
3	2. On September 4, 1991, a case was opened by	Declaration of Henry "Hank" Bouillercce, page
4	the County based upon a citizen complaint	2, paragraph 3.
5	alleging the operation of a "Roto-Rooter"	Opposing Counsel's Objection: irrelevant;
6	business on the property that was zoned for	disputed as to zoning, legal effect thereof and
7	Agriculture. Investigation by the County	zoning violation.
8	involved confirmation of the complaint, and	
9	advising Dallas and Theresa Woll, the owners	
10	of the property in violation, of the complaint	
11	and the issuance of a Notice of Violation.	
12	Thereafter, the owner relocated the business to	
13	a commercial property in Kelseyville,	
14	California. The case was closed on January 7,	
15	1993.	
16	3. On May 19, 2000, the Code Compliance	Declaration of Henry "Hank" Bouillercce, page
17	Division of the Community Development	2, paragraph 4.
18	Department for the County of Lake again	Opposing Counsel's Objection: irrelevant
19	received a complaint relating to the operation of	
20	a septic tank pumping business with an office	
21	and shop at the same property owned by Dallas	
22	and Theresa Woll. Despite this complaint, the	
23	case became inactive.	
24	4. During a site visit on April 2, 2004, the	Declaration of Henry "Hank" Bouillercce, page
25	County confirmed that a Roto-Rooter business	2, paragraph 5; Exhibit "B" thereto.
26	was again operating on the property. On April	Opposing Counsel's Objection: irrelevant,
27	14, 2004, the Code Compliance Officer issued	except as to the recordation of Notice of
28	a Notice of Nuisance and posted and mailed it	Nuisance on April 14, 2004, and the content of

certified. On the same date, Henry Bouillercce recorded the Notice of Nuisance with the County Recorder's office. (A true and correct copy of this Notice of Nuisance is attached to the Declaration of Henry "Hank" Bouillercce marked Exhibit "B") The notice indicated that the condition causing the nuisance was operating a commercial plumbing business in an Agriculture or (A) zoning district. It gave the Wolls until May 7, 2004 to abate. The Wolls were further informed that if it was not abated, within the time prescribed, enforcement will apply to the Board of Supervisors for an order to abate said premises. The Notice specifically advised to "Contact Lake County Planning Department for information regarding correct zoning for Commercial Business uses."

the Notice.

5. On August 2, 2004, Hank Bouillercce advised Theresa Woll of what needed to be done in order to come into compliance with county codes.

Declaration of Henry "Hank" Bouillercce, page 2, paragraph 6.

Opposing Counsel's Objection: irrelevant

6. During a subsequent site visit on November 3, 2004, Hank Bouillercce witnessed owner Dallas Woll operating a tanker truck returning to the property and hauling a "blue room."

Declaration of Henry "Hank" Bouillercce, page 2, paragraph 7.

Opposing Counsel's Objection: irrelevant

7. Hank Bouillercce interviewed Mr. Woll during a site visit on December 8, 2005. Mr. Woll said he considered his business to be

Declaration of Henry "Hank" Bouillercce, page 3, paragraph 8.

Opposing Counsel's Objection: irrelevant

1 agriculture related use of the property because
 2 he was providing service to the surrounding
 3 farms and vineyards in and around the area of
 4 his property. Hank Bouillercé's review of the
 5 Lake County Zoning Ordinance failed to
 6 identify a plumbing, sewage, septic or pumping
 7 business as an allowed use for the Agriculture
 8 Zoning District. Hank Bouillercé's review of
 9 the local telephone directory revealed an
 10 advertisement for this Roto-Rooter business.
 11 The ad listed seven (7) telephone numbers for
 12 seven cities in Lake and Mendocino Counties.
 13 A review of records disclosed no permits issued
 14 for this business.

15 8. On December 16, 2005, a superceding
 16 Notice of Nuisance was issued and recorded as
 17 it had been more than a year since the last
 18 Notice of Nuisance was issued, and on
 19 December 19, 2005, it was posted and mailed,
 20 via certified mail, to the owners. (A true and
 21 correct copy of this Notice of Nuisance is
 22 attached to the Declaration of Henry "Hank"
 23 Bouillercé marked Exhibit "C") The Notice
 24 indicated that it was issued pursuant to Lake
 25 County Code, Chapter 13, Article 1 et. seq. The
 26 condition causing the nuisance was listed as
 27 follows: "Operating a commercial plumbing
 28 business entitled 'Roto-Rooter Plumbers' and

Declaration of Henry "Hank" Bouillercé, page
 3, paragraph 9; Exhibit "C" thereto..

providing plumbing, sewer and drain services not allowed in the Agriculture (A) zoning district.” Completion of said abatement was January 15, 2006. The Notice stated: “Contact the Lake County Planning Division for information regarding the correct zoning for Commercial Business use.” The superceding Notice of Nuisance was returned due to a wrong address and remailed, on January 11, 2006 to a new mailing address, after which a U.S. Postal Service receipt of delivery was received by the County office on January 17, 2006.

9. On February 8, 2006, Henry Bouillercé’s review of records disclosed an appropriate permit had not yet been issued or applied for.

Declaration of Henry “Hank” Bouillercé, page 3, paragraph 10. Opposing Counsel’s Objection: irrelevant

10. On February 9, 2006, the Notice to Abate Nuisance was issued and mailed, certified. (A true and correct copy of this Notice to Abate Nuisance is attached to the Declaration of Henry “Hank” Bouillercé marked Exhibit “D”) The Notice to Abate stated:

Declaration of Henry “Hank” Bouillercé, page 3, paragraph 11; Exhibit “D” thereto..

PURSUANT TO LAKE
COUNTY CODE, CHAPTER
13, ARTICLE 1 et. seq.,
NOTICE IS HEREBY GIVEN
TO APPEAR BEFORE THE
LAKE COUNTY BOARD OF
SUPERVISORS AT 9:15 a.m.
ON THE 28TH DAY OF
FEBRUARY, 2006 IN THE
LAKE COUNTY
COURTHOUSE, 255 NORTH
FORBES STREET,
LAKEPORT, CALIFORNIA,

1	TO SHOW CAUSE, IF ANY	
2	THERE BE, WHY SUCH	
3	CONDITION(S) SHOULD NOT	
4	BE CONDEMNED AS A	
5	NUISANCE AND WHY SUCH	
6	NUISANCE NOT BE ABATED	
7	BY THE ENFORCEMENT	
8	OFFICIAL.	
9	11. While at the property to post the Notice to	Declaration of Henry "Hank" Bouillercce, page
10	Abate Nuisance on February 9, 2006, Henry	4, paragraph 12.
11	Bouillercce spoke to owner Dallas Woll and	Opposing Counsel's Objection: irrelevant
12	handed him a copy of the document. At that	
13	time, Woll charged that a lien had illegally been	
14	placed on the property sometime during	
15	November or December 2005. Henry	
16	Bouillercce told him the document he was	
17	referring to was not a lien but a superseding	
18	Notice of Nuisance, which was recorded, mailed	
19	and posted at the property in December 2005,	
20	and, later, remailed to a corrected address.	
21	Henry Bouillercce further told him a receipt of	
22	delivery had been received from the postal	
23	service revealing that delivery had been made.	
24	Woll denied receiving the document and stated	
25	he would take legal action by suing the County	
26	of Lake and the Director of the Community	
27	Development Department.	
28	12. The case file reveals that the superceding	Declaration of Henry "Hank" Bouillercce, page
	Notice of Nuisance was issued and recorded on	4, paragraph 13.
	December 16, 2005 and posted and mailed	
	certified on December 19, 2005; returned and	

1 remailed on January 11, 2006. The due date
2 was reset for February 11, 2006. On January
3 17, 2006, the department received a certified
4 mail receipt (signed for) by “D Woll” on
5 January 13, 2006.

6 13. On February 9, 2006 at 11:00 a.m., Henry
7 Bouillercce posted, at Mr. Woll’s property the
8 Notice to Abate Nuisance. A copy of the
9 document was also handed to Mr. Woll at that
10 time. Further, it was mailed to him on the same
11 date, certified mail, return receipt requested.
12 The receipt was returned February 13, 2006.

Declaration of Henry “Hank” Bouillercce, page
4, paragraph 14.

13 14. On February 22, 2006, Rick Coel, the
14 Deputy Director, telefaxed to the Woll’s current
15 attorney, Frear Stephen Schmid, the Lake
16 County Code section dealing with Major Use
17 Permit and the Staff Report. The properly
18 noticed Board of Supervisors hearing was held
19 on February 28, 2006. The hearing was
20 indefinitely continued to allow Woll to apply for
21 a major use permit. The Board agreed to delay
22 any decision pending the major use permit
23 results.

Declaration of Henry “Hank” Bouillercce, page
4, paragraph 15.

Opposing Counsel’s Objection: irrelevant

24 15. On March 9, 2006, the Community
25 Development Department received the Wolls’
26 Use Permit application. On September 12,
27 2006, Richard Coel, Assistant Community
28 Planning Director, issued a Staff Report to the

Declaration of Henry “Hank” Bouillercce, page
4, paragraph 16.

Opposing Counsel’s Objection: irrelevant

1	Planning Commission. The Staff actually	
2	recommended approval of the Wolls' request	
3	for a major use permit to continue to operate	
4	this business.	
5	16. Nevertheless, on September 28, 2006, the	Declaration of Henry "Hank" Bouillercce, page
6	Planning Commission unanimously denied the	4, paragraph 17.
7	Wolls' use permit for the existing portable	Opposing Counsel's Objection: irrelevant
8	chemical toilet, septic service and plumbing	
9	business on their property. The Planning	
10	Commission denied the applicant's request for a	
11	Major Use Permit.	
12	17. The Wolls appealed the Planning	Declaration of Henry "Hank" Bouillercce, page
13	Commission's decision to the Board of	5, paragraph 18.
14	Supervisors on October 3, 2006. On March 9,	Opposing Counsel's Objection: irrelevant
15	2007, appellant Dallas Woll submitted a brief in	
16	support of his appeal from the Planning	
17	Commission's denial of the use permit. The	
18	Board denied the appeal during a hearing on	
19	March 17, 2007.	
20	18. On July 19, 2007, Dallas Woll filed a	Declaration of Henry "Hank" Bouillercce, page
21	petition for writ of administrative mandamus	5, paragraph 19.
22	with the Lake County Superior Court.	Opposing Counsel's Objection: irrelevant
23	19. On August 29, 2007, Henry Bouillercce's	Declaration of Henry "Hank" Bouillercce, page
24	site visit to the property revealed that the Wolls	5, paragraph 20.
25	were still operating the business six months	Opposing Counsel's Objection: irrelevant
26	after the Board issued its decision	

1 Dated: September 11, 2008

KELLY JACKSON & CHRISTIANSON, LLP

2
3 By: /s/

4 Clay J. Christianson
5 Attorneys for Defendant
6 County of Lake

7 It is agreed that the above Fact Nos. 1 through 19 are undisputed facts (except as noted with
8 reference to Fact Nos. 1 and 2) although plaintiff contends that Fact Nos. 1 through 7, 9, 11, and 14
9 through 19 are not relevant to the issues raised by defendant's Motion for Summary Judgment,
10 plaintiff reserves the right to object to those on grounds of relevance.

11
12 Dated: September 11, 2008

13 By: /s/

14 Frear Stephen Schmid, Esq.
15 Attorney for Dallas Woll

16
17 **SIGNATURE ATTESTATION**

18
19 **I attest that I have on file all holograph signatures for any signatures indicated by a conformed**
20 **signature (/s/) within this e-filed document.**

21
22
23
24 /s/

25 Clay J. Christianson
26 Attorneys for Defendant
27 County of Lake